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the SS Entities

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

SPORTS SHINKO CO., LTD.,	)	CIVIL NO. CV 04-00124
a Japanese corporation,	)	ACK/BMK
)	
Plaintiff,	)	CONSOLIDATED CASES
)	
vs.	)	PLAINTIFF'S AND THIRD-PARTY
	)	DEFENDANTS SPORTS SHINKO CO.,
	)	LTD., SPORTS SHINKO (HAWAII)
	)	CO., LTD., SPORTS SHINKO
QK HOTEL, LLC, a Hawai'i	)	(MILILANI) CO., LTD., SPORTS
limited liability company,	)	SHINKO (KAUAI) CO., LTD.,
et al.,	)	SPORTS SHINKO (PUKALANI) CO.,
	)	LTD., SPORTS SHINKO RESORT
Defendants,	)	HOTEL CORPORATION, SPORTS
	)	SHINKO (WAIKIKI) CORPORATION,
and	)	AND OCEAN RESORT HOTEL
	)	CORPORATION'S CONCISE
FRANKLIN K. MUKAI,	)	STATEMENT OF FACTS IN SUPPORT
	)	OF OPPOSITION TO KG
Third-Party	)	DEFENDANTS' MOTION FOR SUMMARY
Plaintiff,	)	JUDGMENT IN CV NO. 04-00128
	)	ACK-BMK; DECLARATION OF
vs.	)	GLENN T. MELCHINGER; EXHIBITS
	)	"1" - "36"; DECLARATION OF
	)	STEVEN C. SILVER; LIST OF
SPORTS SHINKO (USA) CO.; LTD.,	)	TRANSLATED DOCUMENTS;
a Delaware corporation, et al.,	)	DECLARATION OF TSUGIO FUKUDA;
	)	EX. "T-1"; DECLARATION OF
)	

Third-Party	)	DAVID KLAUSNER;
Defendants.	)	EXHIBITS "K-A" - "K-C";
	)	CERTIFICATE OF WORD COUNT;
	)	CERTIFICATE OF SERVICE
)	
	)	Hearing Date: March 20, 2006
	)	Time: 9:30 a.m.
	)	Judge: Hon. Alan C. Kay
SPORTS SHINKO (USA) CO., LTD.,	)	CIVIL NO. CV 04-00125
a Delaware corporation,	)	ACK/BMK
)	
Plaintiff,)	
)	
vs.)	
)	
PUKALANI GOLF CLUB, LLC, a)	
Hawai'i limited liability)	
company, et al.,)	
)	
Defendants,)	
)	
and)	
)	
FRANKLIN K. MUKAI,)	
)	
Third-Party)	
Plaintiff,)	
)	
vs.)	
)	
SPORTS SHINKO CO., LTD.,)	
a Japan corporation, et al.,)	
)	
Third-Party)	
Defendants.)	
)	
SPORTS SHINKO (USA) CO., LTD, a	)	CIVIL NO. CV 04-00126
Delaware corporation,	)	ACK/BMK
)	
Plaintiff,)	
)	
vs.)	
)	
KIAHUNA GOLF CLUB, LLC,)	
a Hawai'i limited liability)	
company, et al.,)	
)	
Defendants,)	
)	

and)	
)	
FRANKLIN K. MUKAI,)	
)	
Third-Party)	
Plaintiff,)	
)	
vs.)	
)	
SPORTS SHINKO CO., LTD.,)	
a Japan corporation, et al.,)	
)	
Third-Party)	
Defendants.)	
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)	
SPORTS SHINKO CO., LTD., a)	CIVIL NO. CV 04-00127
Japanese corporation,)	ACK/BMK
)	
Plaintiff,)	
)	
vs.)	
)	
OR HOTEL, LLC, a Hawai'i)	
limited liability company,)	
et al.,)	
)	
Defendants,)	
)	
and)	
)	
FRANKLIN K. MUKAI,)	
)	
Third-Party)	
Plaintiff,)	
)	
vs.)	
)	
SPORTS SHINKO (USA) CO., LTD.,)	
a Delaware corporation, et al.,)	
)	
Third-Party)	
Defendants.)	
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)	
SPORTS SHINKO (USA) CO., LTD.,)	CIVIL NO. CV 04-00128
a Delaware corporation,)	ACK/BMK
)	
Plaintiff,)	
)	

vs.)
)
MILILANI GOLF CLUB, LLC,)
a Hawai'i limited liability)
company, et al.,)
)
Defendants,)
)
and)
)
FRANKLIN K. MUKAI,)
)
Third-Party)
Plaintiff,)
)
vs.)
)
SPORTS SHINKO CO., LTD.,)
a Japan corporation, et al.,)
)
Third-Party)
Defendants.)

**PLAINTIFFS' AND THIRD-PARTY DEFENDANTS' SPORTS SHINKO CO., LTD.,
SPORTS SHINKO (HAWAII) CO., LTD., SPORTS SHINKO (MILILANI) CO.,
LTD., SPORTS SHINKO (KAUAI) CO., LTD., SPORTS SHINKO (PUKALANI)
CO., LTD., SPORTS SHINKO RESORT HOTEL CORPORATION,
SPORTS SHINKO (WAIKIKI) CORPORATION, AND
OCEAN RESORT HOTEL CORPORATION'S CONCISE STATEMENT
OF FACTS IN SUPPORT OF OPPOSITION TO KG DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT IN CV NO. 04-00128 ACK-BMK**

Pursuant to Rule 56.1 of the Rules of the United States District Court for the District of Hawai'i ("Local Rules"), Plaintiff and Third-Party Defendants SPORTS SHINKO CO., LTD., SPORTS SHINKO (HAWAII) CO., LTD., SPORTS SHINKO (MILILANI) CO., SPORTS SHINKO (KAUAI) CO., LTD., SPORTS SHINKO (PUKALANI) CO., LTD., SPORTS SHINKO RESORT HOTEL CORPORATION, SPORTS SHINKO (WAIKIKI) CORPORATION, and OCEAN RESORT HOTEL CORPORATION (collectively the "SS Entities") hereby submit their concise

statement of facts in opposition to KG Defendants' Motion for Summary Judgment in CV No. 04-00128 ACK-BMK, filed January 13, 2006:

KG Defendants' Concise Statement	Sports Shinko ("SS") Entities' Position
<p>For the purposes of this motion, the allegations in the complaints in the five consolidated lawsuits are true.</p>	<p>Admit that some case law provides that statements in a complaint are admissions, and no more. This statement of Defendants is misleading, incomplete, and is not a statement of fact. It is a presumption of law for the purposes of the Motion, and is <i>unsupported by any case law</i> citation in the KG Defendants' Motion. SS denies all negative inferences based on this statement or on the allegations in any Complaint or Amended Complaint in these consolidated cases.</p>
<p>At all material times, Toshio Kinoshita exerted operational control over all of the SS entities, including (among others) plaintiff Sports Shinko (USA) Co., Ltd. ("SS-USA") and Sports Shinko (Mililani) Co., Ltd. ("SS Mililani") [<i>through his title of President of the SS entities and direct or indirect shareholder</i>].</p>	<p>Admit Toshio Kinoshita had <i>authority</i> over the SS Companies, but deny that Defendants have proved Toshio <i>actually</i> "exert[ed] operational control" sufficient for the purposes of this Motion. See discussion at Memorandum in Opposition at p. 21, n.5. Defendants fail to distinguish "authority" from exercise of control.</p>
<p>Toshio Kinoshita was President of [the Sports Shinko entities].</p>	<p>Admit, but incomplete and misleading; the SS Companies deny any adverse inferences.</p>

Toshio Kinoshita owned a majority of the stock of SS-Japan [and other statements regarding ownership].	Admit, but incomplete and misleading; the SS Companies deny any adverse inferences.
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FACTS	EVIDENTIARY SUPPORT
There is evidence of Toshio's and the former managements' (including Mukai's) efforts to "hinder, delay, and defraud" SS-Japan's lenders.	Fukuda Decl. at ¶¶ 21-23; see Exs. "1", "5", "6", "8" & "17"; see also related factual issues listed at p. 19 Motion In Opposition to KG Defendants Motion for Summary Judgment and chronology at pp. 14-15.
Toshio Kinoshita, Satoshi Kinoshita and Franklin Mukai (among others) ignored higher cash offers for the SS Hawaii properties brought by Colliers Monroe Friedlander, and transferred the SS Hawaii subsidiaries' property to Defendants for substantially less than their fair value.	Exs. "9" - "15" & "26".
The Resolution and Collection Corporation ("RCC") told Sports Shinko Co., Ltd. of its intent to place SS-Japan into reorganization proceedings in January, 2002, and Toshio held a directors' meeting regarding this prior to the RCC's filing of reorganization proceedings on January 28, 2002.	Fukuda Decl. at ¶ 23.
SS-Japan negotiated to repay its debt to its Japan lenders by selling its Hawaii and other overseas assets.	Ex. "1"

FACTS	EVIDENTIARY SUPPORT
The speed and very nature of the transfers to the KG Defendants are suspect on their face, especially on the eve of bankruptcy and a lawsuit by David Resnick, with seller financing and no cash down, despite higher cash offers.	Exs. "9" - "15", "25", "26", "27", "30", "32", "33"; Fukuda Decl. at ¶ 23.
SS's Pukalani Sewage Treatment Plant (the "STP") on Maui was not a liability; one purchaser offered \$11.5 million cash for Sports Shinko (Pukalani) Co., Ltd.'s Maui property and the STP. Another purchaser offered \$7.5 million cash for the same.	Exs. "11", "12", "36"; Melchinger Decl. at ¶. 41.
The former SS management, including Toshio, engaged in a scheme to hinder, delay or defraud creditors involving placing management agreements on the SS Hawaii subsidiaries' properties and with payments of "termination fees" to Resort Management Services (Hawaii), Inc., a company owned and operated by a former Sports Shinko officer and Toshio's former personal secretary, Yasuo Nishida.	Exs. "2", "3", "4", "5", "6", "7", & "8". Defs'. Exs. "K" - "M".
The Sports Shinko's ("SS") intercompany loans were made for business purposes, were structured as they were because of Japan law and Japanese bank lending practices, and gave Japan banks rights against the SS Hawaii subsidiaries' properties.	Fukuda Decl. at ¶¶ 11-20 & Ex. "T-1" <i>UFJ Bank Limited v. Ieda</i> , 109 Hawai'i 137, 139-140 & n.6, 2005 Haw. LEXIS 608 at *5, *6 & n.6 (Dec. 8, 2005).

DATED: Honolulu, Hawai'i, February 17, 2006.

/s/ Glenn T. Melchinger

PAUL ALSTON

GLENN T. MELCHINGER

Attorneys for Plaintiffs
and Third-Party
Defendants,
the SS Entities